

REVISED AGENDA – December 7, 1999 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1587, Animal Life, Feed, Drugs and Medicines

Action 1 – Consent Proposal to amend Regulation 1587 (c) and (d)(2) to incorporate the provisions of Senate Bill 963.	Adopt proposed language as agreed upon by staff and industry (Exhibit 1, Pages 1-3). Operative Date: Retroactive to January 1, 1997.
Action 2 – Amend Regulation 1587 (a) Proposal to amend Regulation 1587 (a) to reference specific California Food and Agricultural regulations.	Adopt either: 1) Staff and Industry’s proposed language (Exhibit 1, page 1); or 2) The Fund and The Society’s proposal not to amend subdivision (a). (Exhibit 1, page 1). Operative Date: January 1, 2000.
Action 3 – Authorization to Publish	Direct the publication of the proposed amendments to Regulation 1587 as adopted in the above actions. Implementation: Upon OAL approval.

REVISED AGENDA – December 7, 1999 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1587, Animal Life, Feed, Drugs and Medicines

Action Item	Current Regulatory Language	Staff and Industry's Proposed Language
<p>Action 1 – Amend Regulation to Incorporate Provisions of SB 963</p> <p>Exhibit 1, pages 1-3</p>	<p>Regulation 1587 Subdivision (c):</p> <p>(c) DRUGS OR MEDICINES.</p> <p>(1) DEFINITIONS. The term “drugs or medicines, the primary purpose of which is the prevention and control of disease,” as used herein, means and includes any livestock drug approved by the United States Food & Drug Administration, which are defined and registered pursuant to California Food & Agricultural Code Sections 14202, 14206, and 14281. The term also includes vitamins as well as insecticides which are labeled for livestock use and which are administered directly to the livestock. The term includes, but is not limited to, legend drugs, pills and capsules, liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps. “Livestock” includes poultry. “Livestock drug” means any drug, combination of drugs, proprietary medicine, or combination of drugs and other ingredients which is prepared for administration to livestock.</p>	<p>Proposed Regulation Subdivision (c):</p> <p>(c) DRUGS OR MEDICINES.</p> <p>(1) DEFINITIONS. The term “drugs or medicines, the primary purpose of which is the prevention and control of disease,” as used herein, means and includes any livestock drug approved by the United States Food & Drug Administration, which are defined and registered pursuant to California Food & Agricultural Code Sections 14202, 14206, and 14281. The term also includes vitamins as well as insecticides which are labeled for livestock use and which are administered directly to the livestock. The term includes, but is not limited to, legend drugs, pills and capsules, liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps. “Livestock” includes poultry. “Livestock drug” means any drug, combination of drugs, proprietary medicine, or combination of drugs and other ingredients which is prepared for administration to livestock. <u>On or after January 1, 1997, the term “drugs and medicines” also includes oxygen administered to food animals, as provided in (c)(2)(A) below.</u></p>

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Action Item	Current Regulatory Language	Staff and Industry's Proposed Language
	<p>(2) ADMINISTERED DIRECTLY. Prior to January 1, 1997, except as provided in Regulation 1506 (18 CCR 1506), subdivision (h), dealing with licensed veterinarians, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly to animal life. Operative January 1, 1997, tax does not apply to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines as defined in subdivision (c)(1) administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.</p>	<p><u>(2) APPLICATION OF TAX.</u></p> <p><u>(A) OXYGEN. On or after January 1, 1997, tax does not apply to the sale or use of oxygen administered to food animals for the primary purpose of preventing or controlling disease, including oxygen injected into ponds or tanks that house or contain aquatic species raised, kept, or used as food for human consumption. However, tax does apply to the sale or use of oxygen administered to nonfood animals whether or not the animals are being held for sale in the regular course of business.</u></p> <p>(2)<u>(B)</u> ADMINISTERED DIRECTLY. Prior to January 1, 1997, except as provided in Regulation 1506 (18 CCR 1506), subdivision (h), dealing with licensed veterinarians, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly to animal life. Operative January 1, 1997, tax does not apply to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines as defined in subdivision (c)(1) administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.</p>

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Action Item	Current Regulatory Language	Staff and Industry's Proposed Language
	<p>(3) MIXED WITH FEED OR DRINKING WATER. Prior to April 1, 1996, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) administered to animal life as an additive to feed (except as provided in (b)(2)(B) above) or to drinking water. Operative April 1, 1996, tax does not apply to the sale or use of such drugs or medicines administered as an additive to, or component of, feed or drinking water for food animals or for nonfood animals being held for sale in the regular course of business.</p>	<p>(3) <u>(C)</u> MIXED WITH FEED OR DRINKING WATER. Prior to April 1, 1996, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) administered to animal life as an additive to feed (except as provided in (b)(2)(B) above) or to drinking water. Operative April 1, 1996, tax does not apply to the sale or use of such drugs or medicines administered as an additive to, or component of, feed or drinking water for food animals or for nonfood animals being held for sale in the regular course of business.</p>

REVISED AGENDA – December 7, 1999 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1587, Animal Life, Feed, Drugs and Medicines

Action Item	Current Regulatory Language and The Fund and The Society's Proposed Language	Staff and Industry's Proposed Language
<p>Action 2 – Amend Regulation 1587 Subdivision (a) to Incorporate Provisions of SB 963</p> <p>Exhibit 1, Page 1</p>	<p>Current Regulation 1587 (a):</p> <p>(a) ANIMAL LIFE. Tax does not apply to sales of any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Operative January 1, 1993, food animals include ostriches. Operative January 1, 1996, food animals include emus. Tax does apply, however, to retail sales (including sales for breeding purposes) of any form of animal life not of such a kind (non-food animals), as for example, cats, dogs, horses, mink, and canaries.</p>	<p>Proposed Regulation 1587 Subdivision (a):</p> <p>(a) ANIMAL LIFE. Tax does not apply to sales of any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Operative January 1, 1993, food animals include ostriches. Operative January 1, 1996, food animals include emus. <u>Operative January 1, 2000, the term food animals includes any form of animal life classified by the California Department of Food and Agriculture, by regulation, as livestock or poultry intended for human consumption under Sections 18848 and 25408 of the California Food and Agricultural Code. Tax shall not apply to sales of such newly defined food animals on or after the date the related California Food and Agricultural regulation is effective.</u> Tax does apply, however, to retail sales (including sales for breeding purposes) of any form of animal life not of such a kind (non-food animals), as for example, cats, dogs, horses, mink, and canaries.</p>

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Action Item		
Action 3 – Authorization to Publish (whichever language is approved)		

Issue Paper Number 99-059

12/7/99



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

REGULATION 1587 - ANIMAL LIFE, FEED, DRUGS AND MEDICINES

I. Issue

Should Regulation 1587 be amended to provide that any animal identified as intended for human consumption by the California Department of Food and Agriculture, in any regulation created pursuant to California Food and Agricultural Code (CFAC) sections 18848 or 25408, would automatically qualify as a food animal for sales and use tax purposes? If approved, this proposed amendment would be made when Regulation 1587 is amended to include the provisions of Senate Bill 963.¹

II. Staff Recommendation

Staff recommends that Regulation 1587 be amended to incorporate the provisions of Senate Bill 963. Staff also recommends that Regulation 1587 be amended to provide that any animal identified as intended for human consumption by the California Department of Food and Agriculture, in any regulation created pursuant to CFAC sections 18848 and 25408, would automatically qualify as a food animal for sales and use tax purposes.

III. Other Alternative(s) Considered

Alternative 1

As proposed by Ms. Virginia Handley of The Fund for Animals Inc., and Ms. Rose Lernberg, Legislative Chair, Contra Costa Humane Society, do not amend Regulation 1587 (a) to reference the California Food and Agricultural Code.

¹ SB 963 (Monteith), Chapter 289, Statutes of 1999, amends Revenue and Taxation Code Section 6358 to exempt oxygen administered to animals normally used as food for human consumption, when the primary purpose is to prevent or control disease.

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IV. Background

Over the years, the Board has struggled with identifying the specific types of animals that are of a kind the products of which ordinarily constitute food for human consumption (food animals). It is proposed that any animal identified as “intended for human consumption” by the California Department of Food and Agriculture, in any regulation created pursuant to CFAC sections 18848 and 25408, would automatically qualify as a food animal for sales and use tax purposes.

On October 14, 1999, staff met with interested parties to discuss the proposed amendment to Regulation 1587. During the meeting, staff received comments both in support and in opposition of the proposed amendment. As a result, attendees were encouraged to submit a letter voicing either their support or opposition to the proposed amendment and to note other CFAC sections they believed more relevant than the sections currently under consideration.

In a letter dated October 29, 1999, Ms. Virginia Handley, the California Coordinator for The Fund for Animals Inc., (The Fund) stated her opposition to any proposed amendment to Regulation 1587 that uses regulations created by the California Department of Food and Agriculture to determine which animals qualify as food animals for sales and use tax purposes (Exhibit 3). The Fund does not believe the provisions of the CFAC are appropriate for deciding whether or not an animal qualifies as a food animal for sales and use tax purposes. In doing so, The Fund believes the Board is encouraging the marketing and farming of animals whose meat products are not customarily recognized as food products.

In a facsimile dated November 10, 1999, Ms. Rose Lernberg, Legislative Chair of the Contra Costa Humane Society (The Society), voiced her opposition to the proposed amendment to Regulation 1587 (Exhibit 4). The Society believes the mission of the California Department of Food and Agriculture, which includes promoting California agriculture, and that of the Board, to serve the public through fair, effective and efficient tax administration, should be kept completely separate.

Staff did not receive any submissions suggesting other CFAC sections that may be more relevant than the sections currently under consideration.

Discussion – Sales and Use Tax Law

Under existing law, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. A use tax is imposed on the storage, use or other consumption of tangible personal property in California. Either the sales or use tax applies to all sales or purchases of tangible personal property, unless specifically exempted. Revenue and Taxation Code section 6358(a), *Animal Life; Feed; Seeds; Plants; Fertilizer*, provides that the sale, use, or other consumption in this state of any form of animal life of a kind the products of which ordinarily constitute food for human consumption is exempt from sales and use tax. As provided, the exemption from tax applies only to the sale or use of animal life customarily recognized as a source of food for human consumption.

Section 6359, *Food Products*, provides, in part, that the sale, use, or other consumption in this state of food products for human consumption is not subject to sales or use tax. For the purposes of section 6359, “food products” include, but are not limited to, meat and meat products, fish and fish products, eggs and egg products, and milk and milk products, all of which are generally derived from “food animals.”

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Regulation 1587 interprets the Sales and Use Tax Law as it applies to the sale of animal life, feed, drugs and medicines. Currently, the regulation provides that tax does not apply to sales of food animals. The regulation provides the following examples of food animals: cattle, sheep, swine, baby chicks, ostriches, emus, hatching eggs, fish, and bees. The regulation also provides that tax applies to retail sales, including sales for breeding purposes, of any form of animal life not customarily recognized as a source of food for human consumption (nonfood animals). For example, cats, dogs, horses, minks, and canaries are considered nonfood animals.

Discussion – California Food and Agricultural Code

The California Department of Food and Agriculture regulates and controls the importation and transportation of food animals, imposes quarantines, oversees the animal's humane slaughter, and regulates the inspection and approval of the meat and meat products or poultry and poultry products intended for human consumption. The CFAC provides various definitions for animals, livestock, and poultry under a variety of chapters and articles depending on the chapter's purpose. Although the CFAC does not identify and define the term "food animals" for the same purpose as the Sales and Use Tax Law, it does identify those animals intended as a source of food for human consumption.

As proposed by staff, Regulation 1587 will provide that any animal identified as "intended as a source of food for human consumption" by the California Department of Food and Agriculture, in any regulation created pursuant to CFAC sections 18848 or 25408, will automatically qualify as a food animal for sales and use tax purposes. As provided under Section 18848 (Division 9, Part 3, Chapter 4) of the CFAC:

It is unlawful for any person to sell a dressed carcass of any livestock or poultry which is intended for food purposes, or any prepared meat or meat food product or poultry product within the state unless it bears the "inspected and passed" stamp of federal inspection or state inspection applied at the establishment where the animal was slaughtered and at the establishment where the meat or meat food product, or poultry or poultry product was prepared or manufactured.

Section 25408 (Division 12, Part 2, Chapter 1) provides:

'Poultry' means domesticated fowl and domesticated rabbit which is intended for use for human food.

Staff's proposal was discussed in detail at the Interested Parties meeting held on October 14, 1999. Mr. Rich Matteis of the California Grain and Feed Association (hereafter Industry) attended the meeting and voiced his support for the proposed amendment, since he believes it simplifies the determination of what constitutes food animals for his membership.

Discussion – Interested Parties Submissions

Currently, the Board of Equalization, through its laws, regulations, annotations and legal interpretations, is the authoritative body for determining what constitutes a food animal for sales and use tax purposes. The Fund believes that the Board should retain the responsibility for making this determination and should not rely on another regulatory agency to determine whether the sale of a specific type of animal is exempt from sales and use tax. The Fund expressed concern that the California Department of Food and Agriculture would adopt regulations pursuant to CFAC sections 18848 or 25408 that would result in

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animals not customarily recognized as food animals being deemed food “intended for human consumption” and, consequently, a food animal for sales and use tax purposes.

In its October 29, 1999 facsimile, The Fund makes the following points in opposition to staff’s proposed amendments to Regulation 1587:

- “The Department of Food and Agriculture is not a ‘higher authority’ to the Board of Equalization.
- The Department of Food and Agriculture does not do your job. They have other reasons to want to regulate animals, such as brucellosis in captive deer.
- While the Department of Food and Agriculture is not a ‘higher authority,’ the Legislature is. They defeated several measures to give tax benefits to ostriches.
- The Board ignored the Legislature and gave those benefits not only to ostriches, but to emus.
- These decisions have been shown to be a disservice to the California taxpayer in that there has not been shown to be a market for the meat products of these animals.
- While there was a beginning market for breeding animals and eggs, and also feathers and skin in expectation and promotion of a meat market, the markets have not materialized.
- This year The Fund for Animals with the Humane Farming Association sponsored AB 1540 to expand the existing ‘abandonment’ law to include all animals in addition to dogs and cats. This bill was predicated on the abandonment of 600 emus.
- The Board of Equalization should not be a party to ‘pyramid schemes’ by encouraging investors who lose life savings and needlessly sacrifice animals in the process.
- The federal government just gave millions of dollars to bolster the failing buffalo meat industry. Ted Turner was a recipient.
- Assemblyman Frusetta’s AB 1173 is another attempt to assist the bison, deer, and buffalo farmers and could be heard in January. The Board should wait until that bill is resolved. If the Board abandons their independent judgement, the passage of AB 1173 will assure the tax benefits for speculative endeavors.
- These industries are not providing any benefit to the public or to the animals. To the contrary, they have been shown to be detrimental to both.
- I believe this proposal is an attempt to railroad tax benefits for questionable candidates.”

The Society believes in order to have a fair administration of the tax, animal sales exempted from the sales and use tax must be “animal life of a kind the products of which ordinarily constitute food for human consumption,” not the exotic animals that are being promoted by a few individuals. The Society expressed concern that if Assembly Bill 1173, authored by Assemblyman Peter Frussetta, were to pass, it would redefine livestock to include farm-raised American bison, Asian water buffalo, and fallow deer. These animals are not currently recognized as an animal life of a kind the products of which ordinarily constitute food for human consumption. Yet, if the bill passes and the proposed amendment to Regulation 1587 is authorized, the Society believes the Board would be turning over the responsibility

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of determining what constitutes a food animal to the CFAC and, ultimately, sales of these animals would then become exempt from sales and use tax.

Assembly Bill 1173, as amended on April 15, 1999 and April 27, 1999, adds American bison (bison), Asian water buffalo (buffalo), and fallow deer (deer) to slaughter provisions of the California Department of Food and Agriculture and authorizes the preparation, inspection, and marking of carcasses for transportation and/or sale. As stated in the summary provided during the April 21, 1999 Assembly Committee on Agriculture hearing, this bill:

- Adds to the definitions of “livestock,” “custom livestock slaughterhouse,” and “meat processing establishment,” farm raised bison, water buffalo, and deer. Reference is also provided to Fish and Game Regulations dealing with exotic species.
- Adds to the types of animals to be inspected by “livestock meat inspectors,” and to be marked with an approved mark of inspection.
- Makes related technical changes pertaining to the addition of these species.
- Adds prohibition against the sale of bison, water buffalo, and deer that are not inspected at a custom livestock slaughterhouse and language that the provisions do not apply to owners of these species who slaughter on their own premises for their own consumption or for transportation and/or sale.

The bill would specifically amend section 4301 of the Fish and Game Code and sections 18943, 18946, 18947, 18991, 19000, 19001, 19013, 19016, 19020, and 19501 of the CFAC. As proposed, the bill does not reference either CFAC section 18848 or 25408. As such, it does not appear that the passage of Assembly Bill 1173 would have a direct effect on the proposed amendments to Regulation 1587.

Staff believes that the California Department of Food and Agriculture is better equipped to determine what constitutes food “intended for human consumption.” The proposed amendment is believed to provide a more efficient administration of the Sales and Use Tax Law, allowing for regulatory changes under CFAC sections 18848 and 25408, in regard to identifying specific animals as intended for human consumption, to become incorporated in Regulation 1587 by reference. However, this does not preclude the Board from making a determination regarding animals not addressed within the CFAC.

Discussion – Senate Bill 963

Under existing law, section 6358(e) provides an exemption from tax for the sale and use of drugs or medicines administered to food animals when the primary purpose of these drugs or medicines is the prevention or control of disease. Regulation 1587 defines drugs and medicines as any “livestock” drug defined and registered pursuant to specified provisions of the CFAC. The term “livestock” includes animals, poultry, bees, and aquatic and amphibian species that are raised, kept, or used for profit. Therefore, sales of drugs and medicines that are administered to livestock, the products of which are ordinarily food for human consumption, currently qualify for the exemption from sales and use tax provided by section 6358(e).

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Effective January 1, 2000, Senate Bill 963 amends section 6358(e) to include oxygen within the exemption for sales and purchases of drugs and medicines administered to food animals for the primary purpose of preventing or controlling disease. As amended, section 6358 provides in pertinent part:

Animal life, feed; seeds; plants; fertilizer. There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of:

(e) On or after January 1, 1997, drugs or medicines, including oxygen, the primary purpose of which is the prevention or control of disease, that are administered to animal life the products of which ordinarily constitute food for human consumption.”

According to the author’s office, the intent of this bill was to provide a sales tax exemption for oxygen that is used by aquaculturists to help prevent disease in fish and other aquatic species by oxygenating water at fish farms. The language proposed by staff amends Regulation 1587 to incorporate the provisions of the bill. Neither Industry nor any other interested parties expressed any concern regarding staff’s proposed language.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends that Regulation 1587 be amended to incorporate the provisions of Senate Bill 963. Staff also recommends that Regulation 1587 be amended to provide that any animal identified as intended for human consumption by the California Department of Food and Agriculture, in any regulation created pursuant to CFAC sections 18848 and 25408, would automatically qualify as a food animal for sales and use tax purposes.

B. Pros of the Staff Recommendation

- Simplifies the determination of what constitutes a food animal for taxpayers and staff.
- Taxpayers may rely on the applicable California Department of Food and Agriculture regulations as a means of identifying whether a specific animal qualifies as a food animal, prior to notification by the Board.
- Provides more efficient administration of the California Sales and Use Tax Law.
- Simplifies the determination of what constitutes food animals for industry.

C. Cons of the Staff Recommendation

- Staff will be required to monitor and be familiar with another agency’s regulations.
- Believed by The Fund and The Society to be contrary to legislative intent.

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D. Statutory or Regulatory Change

Requires a regulatory amendment.

E. Administrative Impact

With regards to the proposed amendment to Regulation 1587 (a), there are no California Food and Agricultural regulations, adopted pursuant to CFAC sections 18848 and 25408, that identify animals that are not currently deemed food animals for sales and use tax purposes. Implementation is contingent upon approval by the Office of Administrative Law (OAL) and is pursuant to an operative date of January 1, 2000.

Once approval is received, implementation will consist of notification to industry via a Tax Information Bulletin article. Staff will be notified by memorandum.

As for the proposed amendment to Regulation 1587 to incorporate the provisions of SB 963, implementation of the provisions will be immediate. The bill has an effective date of January 1, 1997 therefore; the provisions of the bill are retroactive to this date.

F. Fiscal Impact

1. Cost Impact

Not Applicable

2. Revenue Impact

With regards to amending Regulation 1587 to reference the CFAC, no revenue impact is expected at this time since there are currently no regulations adopted pursuant to CFAC sections 18848 and 25408 that cover any animal life other than those already identified under Regulation 1587. Any future revenue impact is unknown at this time. (See Revenue Estimate)

As for amending Regulation 1587 to implement the provisions of SB 963, any revenue impact would result from enactment of the statute itself. Board staff previously estimated the bill would result in annual state and local revenue losses of \$19,800.

G. Taxpayer/Customer Impact

Simplifies the determination of what constitutes food animals for the industry.

H. Critical Time Frames

None.

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VI. Alternative 1

A. Description of the Alternative

As proposed by Ms. Virginia Handley of The Fund for Animals Inc., and Ms. Rose Lernberg, Legislative Chair, Contra Costa Humane Society, do not amend Regulation 1587 (a) to reference the California Food and Agricultural Code.

B. Pros of the Alternative

- Continues with the status quo.
- Believed by The Fund and The Society to be consistent with legislative intent.

C. Cons of the Alternative

- Does not provide a more simplified means of determining which animals qualify as food animals for industry.
- Board may have difficulty in identifying food animals.

D. Statutory or Regulatory Change

Does not require a statutory or regulatory change.

E. Administrative Impact

None expected.

F. Fiscal Impact

1. Cost Impact

Not Applicable.

2. Revenue Impact

No revenue impact.

G. Taxpayer/Customer Impact

Does not simplify the determination of which animals are considered food animals for industry.

H. Critical Time Frames

None.

FORMAL ISSUE PAPER

Issue Paper Number: **99-059**

Prepared by: Sales and Use Tax Department, Program Planning Division.

Current as of: November 23, 1999.



REGULATION 1587 – ANIMAL LIFE, FEED, DRUGS AND MEDICINES

Staff Recommendation

Staff recommends that Regulation 1587 be amended to incorporate the provisions of Senate Bill 963. Staff also recommends that Regulation 1587 be amended to provide that any animal identified as intended for human consumption by the California Department of Food and Agriculture, in any regulation created pursuant to California Food and Agricultural Code (CFAC) sections 18848 and 25408, would automatically qualify as a food animal for sales and use tax purposes.

Alternative Proposal

The alternative proposal as put forth by The Fund for Animals Inc. and the Contra Costa Humane Society, is that Regulation 1587 subdivision (a) not be amended to reference the California Food and Agricultural Code.

Background, Methodology, and Assumptions

Staff Recommendation:

SB 963

The staff recommendation would incorporate the provisions of Senate Bill 963, Chapter 289, Statutes of 1999 into Regulation 1587. SB 963 amends Revenue and Taxation Code Section 6358 to exempt oxygen administered to animals normally used as food for human consumption, when the primary purpose is to prevent or control disease. These amendments have no revenue effect, as any revenue effect results from enactment of the statute.

California Food and Agricultural Code

The staff recommendation would amend Regulation 1587 to provide that any animal identified as intended for human consumption by any regulation created pursuant to CFAC sections 18848 and 25408, would automatically qualify as a food animal for sales and use tax purposes.

There would be no immediate revenue effect from this proposal, since there are no pending changes to the roster of food animals. There is the possibility of a revenue effect in the future, as changes to the CFAC in the designation of food animals would automatically be incorporated into Regulation 1587. Animals could be either added to or deleted from the roster of food animals and we have no way of knowing what those changes will be.

Alternative Proposal:

The alternative proposal would be to not incorporate any regulation created pursuant to CFAC sections 18848 and 25408 into Regulation 1587. The alternative proposal would have no revenue effect.

Revenue Summary

Staff Recommendation:

The staff recommendation has no revenue effect.

Alternative Proposal:

The alternative proposal has no revenue effect.

Preparation

This revenue estimate was prepared by David E. Hayes, Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Freda Orendt-Evans, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of November 19, 1999

Regulation 1587, Animal Life, Feed, Drugs, and Medicines

Analysis of Current and Staff's Proposed Language

Current Regulatory Language	Staff's Proposed Regulatory Language	Summary Comments
<p>(a) ANIMAL LIFE. Tax does not apply to sales of any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Operative January 1, 1993, food animals include ostriches. Operative January 1, 1996, food animals include emus. Tax does apply, however, to retail sales (including sales for breeding purposes) of any form of animal life not of such a kind (non-food animals), as for example, cats, dogs, horses, mink, and canaries.</p>	<p>(a) ANIMAL LIFE. Tax does not apply to sales of any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Operative January 1, 1993, food animals include ostriches. Operative January 1, 1996, food animals include emus. <u>Operative January 1, 2000, the term food animals includes any form of animal life classified by the California Department of Food and Agriculture, by regulation, as livestock or poultry intended for human consumption under Sections 18848 and 25408 of the California Food and Agricultural Code. Tax shall not apply to sales of such newly defined food animals on or after the date the related California Food and Agricultural regulation is effective.</u> Tax does apply, however, to retail sales (including sales for breeding purposes) of any form of animal life not of such a kind (non-food animals), as for example, cats, dogs, horses, mink, and canaries.</p>	<p>Staff and Industry agree to proposed language.</p> <p>The Fund and The Society recommend that current language be retained and no amendment be made to subdivision (a) of the regulation. They believe that it is the Board's responsibility to determine what constitutes food for human consumption for sales and use tax purposes and that the California Department of Food and Agriculture is not the appropriate authoritative agency to make such determinations.</p>
<p>(c) DRUGS OR MEDICINES.</p> <p>(1) DEFINITIONS. The term "drugs or medicines, the primary purpose of which is the prevention and control of disease," as used herein, means and includes any livestock drug approved by the United States Food & Drug Administration, which are defined and registered pursuant to California Food & Agricultural Code Sections</p>	<p>(c) DRUGS OR MEDICINES.</p> <p>(1) DEFINITIONS. The term "drugs or medicines, the primary purpose of which is the prevention and control of disease," as used herein, means and includes any livestock drug approved by the United States Food & Drug Administration, which are defined and registered pursuant to California Food & Agricultural Code Sections</p>	

Regulation 1587, Animal Life, Feed, Drugs, and Medicines

Analysis of Current and Staff's Proposed Language

Current Regulatory Language	Staff's Proposed Regulatory Language	Summary Comments
<p>14202, 14206, and 14281. The term also includes vitamins as well as insecticides which are labeled for livestock use and which are administered directly to the livestock. The term includes, but is not limited to, legend drugs, pills and capsules, liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps. "Livestock" includes poultry. "Livestock drug" means any drug, combination of drugs, proprietary medicine, or combination of drugs and other ingredients which is prepared for administration to livestock.</p>	<p>14202, 14206, and 14281. The term also includes vitamins as well as insecticides which are labeled for livestock use and which are administered directly to the livestock. The term includes, but is not limited to, legend drugs, pills and capsules, liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps. "Livestock" includes poultry. "Livestock drug" means any drug, combination of drugs, proprietary medicine, or combination of drugs and other ingredients which is prepared for administration to livestock. <u>On or after January 1, 1997, the term "drugs and medicines" also includes oxygen administered to food animals, as provided in (c)(2)(A) below.</u></p> <p><u>(2) APPLICATION OF TAX.</u></p> <p><u>(A) OXYGEN. On or after January 1, 1997, tax does not apply to the sale or use of oxygen administered to food animals for the primary purpose of preventing or controlling disease, including oxygen injected into ponds or tanks that house or contain aquatic species raised, kept, or used as food for human consumption. However, tax does apply to the sale or use of oxygen administered to nonfood animals whether or not the animals are being held for sale in the regular course of business.</u></p>	<p>Staff and Industry agree with proposed language. The Fund and The Society offered no objections.</p> <p>Staff and Industry agree with proposed language. The Fund and The Society offered no objections.</p>

Regulation 1587, Animal Life, Feed, Drugs, and Medicines

Analysis of Current and Staff's Proposed Language

Current Regulatory Language	Staff's Proposed Regulatory Language	Summary Comments
<p>(2) ADMINISTERED DIRECTLY. Prior to January 1, 1997, except as provided in Regulation 1506 (18 CCR 1506), subdivision (h), dealing with licensed veterinarians, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly to animal life. Operative January 1, 1997, tax does not apply to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines as defined in subdivision (c)(1) administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.</p>	<p>(2)(B) ADMINISTERED DIRECTLY. Prior to January 1, 1997, except as provided in Regulation 1506 (18 CCR 1506), subdivision (h), dealing with licensed veterinarians, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly to animal life. Operative January 1, 1997, tax does not apply to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines as defined in subdivision (c)(1) administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.</p>	<p>No change to subdivision other than referencing.</p>
<p>(3) MIXED WITH FEED OR DRINKING WATER. Prior to April 1, 1996, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) administered to animal life as an additive to feed (except as provided in (b)(2)(B) above) or to drinking water. Operative April 1, 1996, tax does not apply to the sale or use of such drugs or medicines administered as an additive to, or component of, feed or drinking water for food animals or for nonfood animals being held for sale in the regular course of business.</p>	<p>(3) (C) MIXED WITH FEED OR DRINKING WATER. Prior to April 1, 1996, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) administered to animal life as an additive to feed (except as provided in (b)(2)(B) above) or to drinking water. Operative April 1, 1996, tax does not apply to the sale or use of such drugs or medicines administered as an additive to, or component of, feed or drinking water for food animals or for nonfood animals being held for sale in the regular course of business.</p>	<p>No change to subdivision other than referencing.</p>

Regulation 1587. ANIMAL LIFE, FEED, DRUGS AND MEDICINES.

(a) ANIMAL LIFE. Tax does not apply to sales of any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), as for example, cattle, sheep, swine, baby chicks, hatching eggs, fish, and bees. Operative January 1, 1993, food animals include ostriches. Operative January 1, 1996, food animals include emus.—Operative January 1, 2000, the term “food animals” includes any form of animal life classified by the California Department of Food and Agriculture, by regulation, as livestock or poultry intended for human consumption under Sections 18848 and 25408 of the California Food and Agricultural Code. Tax shall not apply to sales of such newly defined food animals on or after the date the related California Food and Agricultural regulation is effective.

The term “food animals” does not include any forms of animal life which are commonly kept as pets or companions, the sale of which for food is prohibited by Penal Code Section 598b, nor does it include any horse, the sale of which for human consumption is prohibited by Penal Code Section 598c. Tax does apply, however, to retail sales (including sales for breeding purposes) of any form of animal life not of such a kind (non-food animals), as for example, cats, dogs, horses, mink, and canaries. For example, cats, dogs, horses, mink, and canaries are not food animals.

(b) FEED.

(1) DEFINITION. The term "feed" as used herein includes cod-liver oil, salt, bone meal, calcium carbonate, double purpose limestone granulars and oyster shells, but does not include sand, charcoal, granite grit, sulphur and medicines. It also includes any item which is purchased for use as an ingredient of a product which would constitute a feed were the product itself sold.

(2) APPLICATION OF TAX.

(A) In General. Tax does not apply to sales of feed for food animals or for any non-food animals which are to be sold in the regular course of business.

(B) Cellulose Casings. Tax does not apply to the sale or use of cellulose casings used in the manufacture and production of processed meat products which are ultimately resold as, or incorporated into, feed for food animals or non-food animals which are to be sold in the regular course of business.

(C) Medicated Feed. Tax does not apply to the sale of medicated feed, the primary purpose of which is prevention and control of disease of food animals or of non-food animals which are to be sold in the regular course of business. Tax also does not apply to sales of the particular ingredients purchased from different sellers by a purchaser who mixes them for feeding to such animal life, in such proportions that the product is an exempt medicated feed rather than a drug.

(c) DRUGS OR MEDICINES.

(1) DEFINITIONS. The term “drugs or medicines, the primary purpose of which is the prevention and control of disease,” as used herein, means and includes any livestock drug approved by the United States Food & Drug Administration, which are defined and registered pursuant to California Food & Agricultural Code Sections 14202, 14206, and 14281. The term also includes vitamins as well as insecticides which are labeled for livestock use and which are administered directly to the livestock. The term includes, but is not limited to, legend drugs, pills and capsules, liquid medications, injected drugs, ointments, vaccines, intravenous fluids, and medicated soaps. “Livestock” includes poultry. “Livestock drug” means any drug, combination of drugs, proprietary medicine, or combination of drugs and other ingredients which is prepared for administration to livestock. On or after January 1, 1997, the term “drugs and medicines” also includes oxygen administered to food animals, as provided in (c)(2)(A) below.

(2) APPLICATION OF TAX.

(A) OXYGEN. On or after January 1, 1997, tax does not apply to the sale or use of oxygen administered to food animals for the primary purpose of preventing or controlling disease, including oxygen injected into ponds or tanks that house or contain aquatic species raised, kept, or used as food for human consumption. However, tax does apply to the sale or use of oxygen administered to nonfood animals whether or not the animals are being held for sale in the regular course of business.

(2B) ADMINISTERED DIRECTLY. Prior to January 1, 1997, except as provided in Regulation 1506 (18 CCR 1506), subdivision (h), dealing with licensed veterinarians, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly to animal life. Operative January 1, 1997, tax does not apply to the sale or use of drugs or medicines as defined in subdivision (c)(1) which are administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals. The sale or use of drugs or medicines as defined in subdivision (c)(1) administered directly to non-food animals are subject to tax regardless that such animals are being held for sale in the regular course of business.

(3C) MIXED WITH FEED OR DRINKING WATER. Prior to April 1, 1996, tax applies to the sale or use of drugs or medicines as defined in subdivision (c)(1) administered to animal life as an additive to feed (except as provided in (b)(2)(B) above) or to drinking water. Operative April 1, 1996, tax does not apply to the sale or use of such drugs or medicines administered as an additive to, or component of, feed or drinking water for food animals or for nonfood animals being held for sale in the regular course of business.

(d) EXEMPTION CERTIFICATES.

(1) FEED. Sellers of feed should secure feed exemption certificates with respect to sales of feed of a kind customarily used both to feed food animals and to feed non-food animals which is purchased for food animals, and with respect to sales of all feed which is purchased for non-food animals being held for sale in the regular course of business. The following form of certificate is suggested:

"I hereby certify that all of the feed which I shall purchase from_____

_____ will be purchased for use as feed for food animals or for non-food animals which are being held for sale in the regular course of business. This certificate shall be considered a part of each order which I give unless such order shall otherwise specify. This certificate shall be good until revoked in writing.

Signature_____

Address_____

Occupation_____

Seller's Permit No. (if any)_____

Sellers of feed need not secure feed exemption certificates with respect to sales of feed of a kind ordinarily used only in the production of meat, dairy or poultry products for human consumption or with respect to sales in small units (two standard sacks of grain or less and/or four bales of hay or less) of feed of a kind customarily used either for food production or other purposes (feeding work stock), or with respect to sales of feed that is specifically labeled by the manufacturer for food animals. In the absence of evidence to the contrary, it will be presumed that all such feed are to be used in producing meat, dairy or poultry products for human consumption.

(2) DRUGS OR MEDICINES.

(A) Administered Directly. Operative January 1, 1997, persons who buy drugs or medicines as defined in subdivision (c)(1), which will be administered directly (e.g., orally, hypodermically, or topically or externally as injections, implants, drenches, repellents, or pour-ons) to food animals, should give the vendor an exemption certificate similar to the example in subdivision (d)(2)(C) below.

(B) To be Mixed With Feed or Drinking Water. Operative April 1, 1996, persons who buy drugs or medicines as defined in subdivision (c)(1) to be mixed with feed or drinking water, for food animals or of non-food animals being held for sale in the regular course of business, should give the vendor an exemption certificate similar to the example in subdivision (d)(2)(C) below.

(C) Sellers of drugs or medicines to be mixed with feed or drinking water for food animals or for non-food animals being held for sale in the regular course of business, ~~or~~ to be administered directly to a food animal, or, if oxygen, administered to a food animal such as by pumping or injecting the oxygen into the animal's living environment should request a certificate similar to the following from the buyer:

"I hereby certify that the drugs or medicines which I shall purchase from _____
_____ will be purchased

☐ as an additive to feed or drinking water for food animals or for non-food animals being held for sale in the regular course of business, ~~or~~

☐ for administration directly to a food animal, or

☐ for oxygen administered to a food animal.

This certificate shall be considered a part of each order which I give unless such order shall otherwise specify. This certificate shall be good until revoked in writing.

Signature _____
Address _____
Occupation _____
Seller's Permit No. (if any) _____

(3) INVOICES RELATED TO EXEMPTION CERTIFICATES. Exemption certificates should be complete with the information specified in the above forms, including the names and addresses of the purchasers, in order to constitute adequate support for exemptions claimed by sellers. In addition, the invoices on sales claimed as exempt should specify the names of the purchasers in order to relate them to exemption certificates.

Note: Authority: Section 7051, Revenue and Taxation Code.
Reference: Government Code Section 11343. and Sections 6018.1, 6358, and 6358.4, Revenue and Taxation Code.

THE FUND FOR ANIMALS INC.



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**Virginia Handley
California Coordinator**

29 October 1999

Lynda Cardwell
California Board of Equalization
Sales and Use Tax Department
450 N St, MIC:40
Box 942879
Sacramento, Calif. 94279-0040

Re: Regulation 1587, Animal Life, Feed, Drugs and Medicines

Dear Ms. Caldwell,

Thank you for arranging the October 14 meeting to receive "preliminary responses by interested parties" on the proposal to the Board to automatically bestow tax privileges on any animals designated by the Calif Dept of Food & Agriculture.

I believe my attendance, comments, and lengthy conversation with your staff at the October 14th meeting constitute my "preliminary response" well before the October 22 deadline.

The Fund for Animals is opposed to the proposed amendment to Regulation 1587:

1. The Dept. of Food & Agriculture is not a "higher authority" to the Board of Equalization.
2. The Dept. of Food & Agriculture does not do your job. They have other reasons to want to regulate animals, such as brucellosis in captive deer.
3. While the Dept. of Food & Agriculture is not a "higher authority", the Legislature is. They defeated several measures to give tax benefits to ostriches.
4. The Board ignored the Legislature and gave those benefits not only to ostriches, but to emus.
5. These decisions have been shown to be a disservice to the California taxpayer in that there has not been shown to be a market for the meat products of these animals.
6. While there was a beginning market for breeding animals and eggs, and also feathers and skin in expectation and promotion of a meat market, the markets have not materialized.

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Cleveland Amory, Founder**

7. This year The Fund for Animals with the Humane Farming Association sponsored AB 1540 to expand the existing "abandonment" law to include all animals in addition to dogs and cats. This bill was predicated on the abandonment of 600 emus.

8. The Board of Equalization should not be a party to "pyramid schemes" by encouraging investors who lose life savings and needlessly sacrifice animals in the process.

9. The federal government just gave millions of dollars to the bolster the failing buffalo meat industry. Ted Turner was a recipient.

10. Assemblyman Frusetta's AB 1173 is another attempt to assist the bison, deer, and buffalo farmers and could be heard in January. The Board should wait until that bill is resolved. If the Board abandons their independent judgement, the passage of AB 1173 will assure the tax benefits for speculative endeavors.

11. These industries are not providing any benefit to the public or to the animals. To the contrary, they have been shown to be detrimental to both.

12. I believe this proposal is an attempt to railroad tax benefits for questionable candidates.

The Board should reject this proposal.

Sincerely,

/s/Virginia Handley

Virginia Handley
California Coordinator